



## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 294

[Docket Number MARAD-2022-0247]

RIN 2133-AB95

### Tanker Security Program

**AGENCY:** Maritime Administration (MARAD), Department of Transportation (DOT).

**ACTION:** Interim final rule; request for comments.

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**SUMMARY:** This interim final rule provides procedures to implement certain provisions of the National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA) and the National Defense Authorization for Fiscal Year 2022 (FY22 NDAA). The FY21 NDAA authorized the Secretary of Transportation to establish the Tanker Security Program (TSP) comprised of a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The fleet will meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The FY22 NDAA made minor adjustments related to the participation of long-term charters in the TSP. The Maritime Administration solicits written comments on this rulemaking.

**DATES:** *Effective date:* This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comments due date:* Comments on this interim final rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2022-0247 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](https://www.regulations.gov). Search “MARAD-2022-0247” and follow the instructions for submitting comments.

- E-mail: Rulemakings.MARAD@dot.gov. Include “MARAD-2022-0247” in the subject line of the message.
- Mail/Hand-Delivery/Courier: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W12-140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Call 202-493-0402 to determine facility hours prior to hand delivery.

You may view the public comments submitted on this rulemaking at [www.regulations.gov](http://www.regulations.gov). When searching for comments, please use the Docket ID: MARAD-2022-0247. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s Website at [www.FederalRegister.gov](http://www.FederalRegister.gov) and the Government Publishing Office’s Website at [www.GovInfo.gov](http://www.GovInfo.gov).

*Note:* If you fax, mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your comments by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8 1/2 by 11 inches, single-sided, suitable for copying and electronic filing.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking, 2133-AB95. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled **Public Participation**.

**FOR FURTHER INFORMATION CONTACT:** David Hatcher, Office of Sealift Support, at (202) 366-0688, or via e-mail at [David.Hatcher1@dot.gov](mailto:David.Hatcher1@dot.gov). You may send mail to Mr. Hatcher at Department of Transportation, Maritime Administration, Office of Sealift Support, 1200 New

Jersey Avenue, SE, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647-5527.

**SUPPLEMENTARY INFORMATION:** The FY21 NDAA, with minor adjustments in the FY22 NDAA, required that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily useful, privately-owned product tank vessels to meet national defense and other security requirements. The TSP will provide a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications.

Congress appropriated \$60,000,000 for the TSP in the Consolidated Appropriations Act of 2022, P.L. 117-269. Authorized payments to participating operators are limited to \$6 million per ship, per fiscal year and are subject to annual appropriations. Participating operators will be required to make their commercial transportation resources available upon request by the Secretary of Defense for military purposes during times of war or national emergency.

## **Background**

A fuel tanker study required by the Fiscal Year 2020 National Defense Authorization Act (FY20 NDAA) examined the sufficiency of the U.S.-flagged tanker fleet to meet National Defense Strategy (NDS) requirements. A summary of the report is provided on the DOT/MARAD docket for this rulemaking. The report's summary found there to be a substantial risk to the nation's defense associated with a heavy reliance on foreign-flagged tankers, particularly within a contested environment. The location, timing, and specific missions associated with some tanker requirements dictate the need for U.S.-flagged assets, for which there currently are insufficient numbers available. The report's gap analysis found a clear and critical need for a tanker security program to increase U.S.-flagged tanker capacity, to reduce the risk of reliance on foreign-flagged tankers for the most important fuel missions, and to ensure the Department of Defense (DoD) has sufficient tanker capabilities to meet NDS objectives.

In response to the FY20 NDAA Fuel Tanker Study, Congress directed in the FY21 NDAA, with minor adjustments in the FY22 NDAA, that the Secretary of Transportation, in

consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily useful, privately owned product tanker vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping.<sup>1</sup> The Maritime Administration worked with the DoD's United States Transportation Command to identify and shape TSP requirements and timelines.

Pursuant to the statute, the rule establishes requirements that support typical DOT and MARAD commercial economic objectives such as the tanker vessel eligibility requirements of Section 294.9 to be commercially viable, not more than 10 years in age, and to operate in U.S. foreign commerce. (See 46 U.S.C. 53402(b)(2)-(4),(6)-(7)). In addition, Section 294.9 requires tanker vessels to be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense. (See 46 U.S.C. 53402(b)(5).)). The statute also requires vessel owners, charterers, and operators to meet certain requirements under Section 294.11 intended to identify their corporate citizenship as a matter of ensuring security through proper operational control. (See 46 U.S.C. 54302(b)(1) and (c)). And, under Section 294.25 a TSP participant must agree to the installation onboard its vessel of militarily useful features for national defense purposes as approved by U.S. Coast Guard and the vessel's classification society. (See 46 U.S.C. 53402(a), (b)(5); 46 U.S.C. 53407). Finally, in the event of a national defense emergency, all TSP participants are subject to the terms of an agreement<sup>2</sup> that obligates the TSP participant to make commercial transportation resources (including services) available for military use, upon request by the Secretary of Defense during a time of war or national emergency, or whenever the Secretary of Defense determines that it is necessary for national security or contingency operation. (See 46 U.S.C. 53403-53405, 53407). Section 294.31 also provides for annual payments to program participants and specifies payment

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<sup>1</sup> The tanker security program authority is codified at 46 U.S.C. 53402-53412.

<sup>2</sup> See 50 U.S.C. 4558, Voluntary agreements and plans of action for preparedness programs and expansion of production capacity and supply.

conditions as specified in the statute. (See 46 U.S.C. 53406.) Taken together, the TSP supports both the nation's economy and its national security by strengthening and ensuring the continued availability of U.S.-flag sealift capacity.

### **Immediate Effective Date and Request for Comment**

MARAD is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). MARAD concludes that this rule involves a military function of the United States under 5 U.S.C. 553(a)(1) and is therefore exempt from the requirements of 5 U.S.C. 553 (*see* 5 U.S.C. 553(a)(1)). Nonetheless, MARAD has also analyzed this rule under 5 U.S.C. 553(b)(B) and determined that it has good cause to waive prior opportunity for notice and comment. For similar reasons, MARAD has determined that it has good cause to waive the 30-day delay in effective date under 5 U.S.C. 553. MARAD seeks comment on this interim final rule and will consider comments received in issuing any final rule.

Pursuant to section 5 U.S.C. 553(a)(1), the requirements of 5 U.S.C. 553, including general notice and the opportunity for public comment on a proposed rule and a 30-day delay in the effective date of a final rule, are not required with respect to a rulemaking "to the extent that there is involved... a military or foreign affairs function of the United States." MARAD finds that this interim final rule involves a military function of the United States and therefore can be made effective prior to receiving public comment. 5 U.S.C. 553(a)(1). Under the requirements for establishment of the TSP set forth in the FY21 NDAA, as amended by the FY22 NDAA, and this rulemaking, vessels in the TSP must be militarily useful, participants must be under the supervisory control of the DoD when requested during times of war or national emergency, and participants will perform a direct military function by providing emergency supply capacity. The tanker security program established by the rule therefore directly involves a military function, and the tanker vessels involved in the program perform significantly more than ordinary civilian support services.

Consistent with the statutory authority for the program at 46 U.S.C. 53402, the fleet must be established in consultation with the Secretary of Defense and is intended to meet national defense and other security requirements in addition to maintaining a U.S. presence in international commercial shipping. As required by section 53402, the regulation specifies that a vessel is eligible for inclusion in the fleet only if it “is determined by the Secretary of Defense to be suitable for use by the United States for national defense or military purposes in time of war or national emergency...” In addition, consistent with 46 U.S.C. 53407, the regulation requires that operating agreements between the owner/operator of a vessel in the TSP must be approved by the Secretary of Transportation and the Secretary of Defense. The regulation also requires that a participant in the TSP agree to the installation on its vessel of militarily useful features for national defense purposes as approved by the U.S. Coast Guard and the vessel’s classification society. The statutory provision at 46 U.S.C. 53407, titled “National security requirements,” states specifically that operating agreements “shall provide that upon request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation..., the program participant shall make available commercial transportation resources (including services) described in subsection (d) to the Secretary of Defense....” 46 U.S.C. 53407(b)(1). For these reasons, MARAD concludes that the rule involves a military function of the United States and is thus exempt from the requirements of 5 U.S.C. 553.

While MARAD concludes that the rule is exempt from the requirements of 5 U.S.C. 553 as a rule involving a military function, MARAD also finds good cause under 5 U.S.C. 553(b)(B) to issue this interim final rule to create the Tanker Security Program and establish, in consultation with the Secretary of Defense, a Tanker Security Fleet. Pursuant to 5 U.S.C. 553(b)(B), general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are

impracticable, unnecessary, or contrary to the public interest.” Similarly, pursuant to 5 U.S.C. 553(d), a 30-day delay in effective date is not required if the agency finds good cause to waive the delay and publishes its finding in the rule.

MARAD has determined that it would be impracticable and contrary to the public interest to seek notice and comment on this final rule because of the urgent need to ensure the nation’s security in the face of shifting real-time military priorities and requirements. To meet the urgent national security demand explained in the National Defense Authorization Act for Fiscal Year 2020 Department of Defense Report on United States-Flagged Fuel Tanker Vessel Capacity gap analysis (Tanker Study), MARAD must issue this final rule to ensure its ability to notice, accept, and process applications followed by the review and execution of supporting agreements with qualified vessel operators. This urgency is heightened by an increased DOD priority for tankers since issuance of the Tanker Study. MARAD has consulted with DOD and is issuing this IFR to address the heightened demand for tankers to meet national security objectives. In addition, MARAD emphasizes that national security needs can change quickly, and there is a need to establish the TSP through this IFR to ensure that DOD can meet new or changed circumstances that may arise at any time. There is good cause to make this rule effective immediately to provide for the most efficient means of shoring up sealift capacity not readily available to support DoD’s national security mission demands.

As discussed earlier in the SUPPLEMENTARY INFORMATION section of this document, the intent of this action is to provide improved tanker sealift capacity for the nation’s security demands. The FY20 NDAA Fuel Tanker Study found that while U.S.-Flag commercial tankers provide DoD the greatest reliability for waterborne fuel transportation, the size of the current U.S.-Flag tanker fleet is insufficient to meet specific U.S. national security requirements, leaving significant gaps in DoD’s fuel transportation capabilities. DoD mobility studies have demonstrated a growing concern that DoD’s access to foreign-flag tanker capacity to meet defense objectives will be negatively impacted by the increasing influence and relative control of

the global shipping market by the United States' near-peer competitors. The increased volatility in fuel commodity markets since the publication of the FY20 Fuel Tanker Study has only increased these risks, particularly concerning fuel distribution capabilities. The FY20 Fuel Tanker Study's analysis found, and subsequent mobility studies and market volatility have underscored, a clear and critical need for a Tanker Security Program to reduce DoD's risk of reliance on foreign-flag tankers and stated that TSP should be considered for rapid implementation given the military value it represents.

For these reasons, MARAD also finds good cause to waive prior opportunity for notice and comment on the rule and to waive the 30-day delay in effective date as impracticable and contrary to the public interest. MARAD issues this rule so that it may begin the administrative process necessary to seek applicants and to evaluate and engage qualified tanker vessels and vessel operators, thereby establishing the TSP as early as possible. The Tanker Study's gap analysis demonstrated pressing DoD fuel tanker supply needs. A delay in this rulemaking could result in serious national security concerns if a situation arises where TSP supply resources are necessary.

Though this interim final rule is effective immediately, MARAD seeks comment in response to this interim final rule in determining how to proceed with any final rule. Any final rule may differ from today's rule in response to comments received. Comments are solicited from interested members of the public on all aspects of the interim final rule. MARAD is interested in information concerning whether the rule will be comprehensive and effective in meeting both commercial product fuel needs and DoD fuel transportation requirements and whether any other steps could be taken to ensure that all qualified vessel operators may overcome potential obstacles to admission.

Comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document. MARAD believes that the 60-day comment period will allow



commenters sufficient time to address any issues raised by the interim final rule and still meet the national security demands contemplated. See “**Public Participation**” section below.

## **Regulatory Analyses and Notices**

### **a. Executive Orders 12866, 13563, and DOT Rulemaking Procedures**

Executive Order (E.O.) 12866, E.O. 13563, and the Department of Transportation's administrative rulemaking procedures, provide for determining whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review. This rule has been determined to be significant pursuant to section 3(f) of Executive Order 12866.

### *Background*

Congress authorized the establishment of a Tanker Security Fleet in Sec. 3511 of the FY21 NDAA, which was enacted on January 1, 2021. Section 3511(a) of the Act outlines the establishment of a fleet of product tank vessels, pursuant to agreement, engaged in U.S. foreign commerce and available for military use by the DoD during times of war or national emergency. The statutory language defines, among other elements: the maximum size of the fleet at ten vessels; the general vessel selection criteria; the obligations and rights of program participants; the maximum annual payments per vessel under each agreement and the conditions of such payments; and each participant's national security obligations under the program.

### *Benefits*

The major benefits of TSP are that it will: (1) provide DoD with assured access of up to 10 U.S.-flagged product tank vessels that may be used to supply the armed forces of the United States with fuel during times of war or national emergency, and (2) help to ensure that a core fleet of U.S.-based product tankers can operate competitively in international trade and enhance U.S. supply chain resiliency for liquid fuel products. The report on U.S.-flagged fuel tanker vessels completed by DoD in accordance with section 3519 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) identified an insufficient U.S.-flagged tanker capacity to meet National Defense Strategy requirements. In addition, TSP will provide

necessary support to help maintain a U.S.-flag presence in international commerce. The TSP vessels will be a critical component of the U.S.-flag capability that contributes to the U.S. mariner base for utilization on both the commercial and DoD fleets.

#### *Costs*

Congress set strict statutory limits, not subject to the Secretary of Transportation's discretion, on the maximum number of participant vessels and the annual payment per vessel. Section 3511(a) of the Act authorized the participation of 10 vessels in TSP through the end of FY 2035. The operators of each of these 10 vessels may be paid up to \$6 million per vessel per year, subject to specific operating requirements, with a maximum programmatic payment authorization of \$60 million per year for FYs 2022–2035, subject to appropriations. Application costs for vessels that may apply for the TSP are discussed in paragraph (e) of this section, describing MARAD's compliance with the Paperwork Reduction Act for this rule.

#### *Analysis of Alternatives*

Section 3511 of the FY21 NDAA provides for the TSP with new funding authorization and establishes a dedicated product tanker fleet program distinct from the existing MSP. Congress also prescribed the minimum requirements of the TSP, including ship ownership, vessel eligibility, vessel documentation, program duration, the number of participating vessels, the amount of funding, and national security obligations. The Act provides detailed requirements for starting and operating the TSP, and MARAD does not have discretion to deviate from those requirements in the regulations that establish the TSP's operation.

#### *b. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, rules that are exempt from notice and comment under the APA are also exempt from the RFA analytical requirements, including conducting a regulatory flexibility analysis. See 5 U.S.C. 603(a). Because, as discussed above, this rule is exempt from the APA notice and comment requirements, MARAD is not required to conduct a regulatory flexibility analysis.

c. Executive Order 13132, Federalism

MARAD has examined the interim final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The interim final rule will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

d. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by State, local, or tribal governments or by any members of the private sector. Therefore, the Agency has not prepared an assessment pursuant to the Unfunded Mandates Reform Act.

e. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This interim final rule includes a new emergency OMB approved collection of information under OMB Control Number 2133-0554. The collection is necessary to accept applications, undertake the review of applicant qualifications to ensure applications are complete, and administer and maintain all aspects of the TSP program. MARAD expects an estimated 10 respondents, with a response frequency of once

annually. The annual burden estimate is \$2,438.50. We seek comment from the public on our burden estimates.

f. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

**Public Participation**

*How long do I have to submit comments?*

MARAD is providing a 60-day comment period.

*How do I prepare and submit comments?*

To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing MARAD to search and copy certain portions of your submissions. Comments may be submitted to the Docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Search using the MARAD Docket Number and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed

at [http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to the interim final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this interim final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. MARAD will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this interim final rule. Submissions containing CBI should be sent to the email address provided in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit two copies, from which you have deleted the claimed CBI, to Docket Management at the address given above under **ADDRESSES**. Any comments MARAD receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

*Will the agency consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above

under **ADDRESSES**. The hours of the Docket Management office are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

## **List of Subjects**

### *46 CFR Part 294*

Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Maritime Administration adds Part 294 to Title 46 to read as follows:

## **PART 294—TANKER SECURITY PROGRAM (TSP)**

### **Sec.**

#### **Subpart A—Introduction**

- 294.1 Purpose.
- 294.3 Definitions.
- 294.5 Applications.
- 294.7 Procedural waivers.

#### **Subpart B—Establishment of a Tanker Security Fleet**

- 294.9 Product tanker vessel eligibility.
- 294.11 Owner, charterer, and operator citizenship eligibility requirements.
- 294.13 Special rule for Fleet Vessel entry age.

#### **Subpart C—Award of TSP Operating Agreements**

- 294.15 Initial award of TSP Operating Agreements.
- 294.17 Subsequent award of TSP Operating Agreements.
- 294.19 Nature of award procedure.

#### **Subpart D—TSP Operating Agreements**

- 294.21 General conditions.
- 294.23 Special terms.

294.25 National security modifications.

294.27 Financial reporting.

### **Subpart E—Billing and Payment**

294.29 Billing procedures.

294.31 Payments.

### **Subpart F—Appeals Procedures**

294.33 Administrative determinations.

**Authority:** 46 U.S.C. chapter 534, 49 CFR 1.93.

### **Subpart A—Introduction**

#### **§ 294.1 Purpose.**

This part prescribes regulations implementing subtitle B of Title XXXV of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), section 3511 and the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), section 3515, codified at Chapter 534 of Title 46, United States Code, governing the establishment of a Tanker Security Fleet of product tank vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States permitted under a registry endorsement issued by the United States Coast Guard. The Department of Defense (DoD) and the Department of Transportation (DOT) have joint responsibility for the Tanker Security Fleet, with responsibility delegated to the Commander, United States Transportation Command through the Secretary of Defense, and the Maritime Administrator through the Secretary of Transportation.

#### **§ 294.3 Definitions.**

For the purposes of this part:

(a) *Administrator* means the Administrator, Maritime Administration, United States Department of Transportation.

(b) *Agreement Holder* means the owner or operator of a Fleet Vessel, excluding a trust, that:

(1) Meets the eligibility requirements of 46 U.S.C. 53402(c)(1), (2), (3), or (4); and

(2) Enters into a Tanker Security Program Operating Agreement for the Fleet Vessel with the Secretary of Transportation pursuant to 46 U.S.C. 53403.

(c) *Applicant* means a person applying for a Tanker Security Program Operating Agreement, excluding trusts.

(d) *Classification society* means the American Bureau of Shipping, or another classification society accepted by the Commandant of the United States Coast Guard.

(e) *CAP* means Conditional Assessment Program, a voluntary program offered by classification societies intended to measure and document the actual technical and functional condition of tankers 15 years of age or more.

(f) *Coastwise trade* means waterborne trade between points in the United States as defined in 46 U.S.C. chapter 551.

(g) *Commandant* means the Commandant of the United States Coast Guard.

(h) *Commander* means Commander, USTRANSCOM.

(i) *CR* means continuing resolution.

(j) *Defense Contractor* means a person that operates or manages United States-documented vessels for SecDef, or charters vessels to SecDef, and has entered into a special security agreement with SecDef.

(k) *Documentation Citizen* means a person able to document a vessel under 46 U.S.C. chapter 121. This definition includes a United States Citizen Trust.

(l) *DoD* means the United States Department of Defense.

(m) *Emergency Preparedness Agreement* means a voluntary agreement established by the Maritime Administration (MARAD) under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558).

(n) *Fiscal Year* means an annual period beginning on October 1 and ending on September 30.

(o) *Fleet* means all Tanker Security Program (TSP) Fleet Vessels at any given time.



(p) *Fleet vessel* means any product tank vessel operating under a Tanker Security Program

Operating Agreement on or after January 1, 2022, that—

(1) meets the requirements of 46 U.S.C. 53402(b); and

(2) is no more than 20 years of age.

(q) *Foreign commerce* means commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and commerce or trade between foreign countries.

(r) *Noncontiguous domestic trade* means the waterborne transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(s) *Person* includes corporations, partnerships, and associations existing under, or authorized by, laws of the United States, or any State, territory, district, or possession thereof, or any foreign country.

(t) *Product tank vessel* means a double-hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(u) *SecDef* means the Secretary of Defense.

(v) *Secretary* means the Secretary of Transportation unless the context indicates otherwise.

(w) *Section 50501 citizen* means a person meeting the statutory qualifications for United States citizenship designation under 46 U.S.C. 50501.

(x) *Tanker Security Program Operating Agreement or TSP Operating Agreement* means the assistance agreement between an Agreement Holder and MARAD that provides for payments under this part but is not a procurement contract.

(y) *United States Citizen Trust* means:

(1) Subject to paragraph (3) of this definition, a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a section 50501 citizen; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a section 50501 citizen, or involving any other person that is not a section 50501 citizen, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a section 50501 citizen has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not section 50501 citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition will not be considered to prohibit a person who is not a section 50501 citizen from holding more than 25 percent of the beneficial interest in a trust.

(z) *USTRANSCOM* means United States Transportation Command.

(aa) *Vessel of the United States* means a merchant vessel that has been documented under 46 U.S.C. chapter 121.

## **§ 294.5 Applications.**

(a) *Applicants*. Each applicant for a TSP Operating Agreement is required to apply to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590. Electronic submissions must be submitted to [sealiftsupport@dot.gov](mailto:sealiftsupport@dot.gov). Application forms are available upon request or may be downloaded from MARAD's website. Required information includes:

(1) An Affidavit of section 50501 citizenship that comports with the requirements of 46 CFR part 355, if applying as a section 50501 citizen. Otherwise, an affidavit which demonstrates that the

Applicant is qualified to document a vessel under 46 U.S.C. chapter 121 is required. If the Applicant is a vessel operator and proposes to employ a vessel manager, then the Applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements as the Applicant;

(2) Corporate documents, to include the following:

(i) Certificate of Incorporation or other organization papers, including amendments presently in effect;

(ii) Corporate by-laws or other governing instruments, including amendments presently in effect;

(iii) Form or type of organization, i.e., individual, partnership, corporation, etc.;

(iv) Federal, state, or other laws under which the Applicant is organized or incorporated, and the date of organization or incorporation;

(v) Address of principal offices, and of important branch offices, if any;

(vi) Description of domestic and international and corporate affiliations, including (but not limited to) parent companies, subsidiary companies, and other related companies within its corporate structure, along with a description of the nature of the business transacted with each affiliated corporation;

(vii) Concerning each officer and director of the Applicant, provide name, address, nationality, number of shares owned and specify type of shares whether voting or non-voting;

(viii) For each individual or entity that owns 5 percent or more of the outstanding capital shares of any class of stock of the Applicant, include the name, address, nationality, and number of capital shares owned and specify type of shares whether voting or non-voting; and

(ix) A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights of 5 percent or more of the outstanding shares of the Applicant are owned, controlled, or exercised by any person not the holder of legal title to such

shares. Give the name, address, nationality, and business of any such person, and if not an individual, the form of organization;

(3) Financial data, to include the following:

(i) An audited financial statement or a completed MARAD Form MA-172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items.

(4) Maritime related affiliations including carriers or alliances with which the Applicant maintains an ongoing relationship;

(5) Ongoing business relationships with any refineries, terminals, distributors, or other entities engaged in refined petroleum production and distribution, whether in the United States or in a foreign state, both at the time of application and, if applicable, projected to be established within the five years following the date of application;

(6) Diversity of trading patterns. List of countries and trade routes serviced or trades in which the product tank vessel is to be operated, whether the vessel is to be operated on a voyage charter, or time charter, and any specific tanker pools the vessel is associated with;

(7) Applicant's record of owning and/or operating product tank vessels, include the following:

(i) Provide the number, type, and size of product tank vessels owned and/or operated in the last ten years, specifying whether owned or operated, flag(s) of the individual vessels, trades involved, number of employees in your ship operations department, including the number of employees directly employed in U.S.-flag operations;

(ii) Operating experience with product tank vessels in international trade;

(iii) Demonstration of reliability and breadth of services and experience;

(iv) Experience in delivering services in accordance with government contracts or in relation to the carriage of DoD or other government sponsored cargoes;

(v) Vessels owned by the applicant and chartered by other persons;

(vi) Vessels chartered by the applicant from other persons – provide vessel name, flag of registry, period of charter, name of charterer or owner (as applicable) and area of operation;

(vii) Vessel or ship managers utilized in the operation of your vessels; and

(viii) Any other information you believe to be relevant to your record of owning or operating vessels.

(8) Product tank vessel details and operational standards:

(i) Vessel must be a party to the Oil Companies International Marine Forum's Ship Inspection Report (SIRE) System and applicant must provide date of last SIRE report.

(ii) Applicant must confirm acceptances received and/or retained by the vessel since the last SIRE report.

(iii) Applicant must confirm that the vessel has not been rejected or refused by any Charterer since the inspections leading to the said SIRE report.

(iv) Applicant must provide a current Intertanko Standard Tanker Chartering Questionnaire 88 (Q-88) (no more than 60 days old).

(v) Applicant must confirm vessel has vetting approval from at least two oil majors providing date of vetting and name of oil major, at least one vetting approval must be less than 6 months old at time of application.

(vi) Applicant must provide a copy of vessel's current Class Society issued Safety Management Certificate.

(vii) Applicant must provide a copy of vessel's current Flag State issued International Ship Security Certificate.

(viii) Applicant must confirm vessel's ability to carry one complete un-decanted tank washing in dedicated slop tanks.

(ix) Applicant must submit a General Arrangement Plan, trim and stability booklet, and a set of the ship's capacity and stowage plans. This is to include cargo piping. Applicants are to provide

narrative descriptions to accompany the drawings indicating proposed locations of all required spaces and compartments listed in the military requirements.

(x) Applicant must provide evidence of the vessel's most recent U.S. Coast Guard (USCG) and American Bureau of Shipping (ABS) (or other classification society accepted by the Commandant of the Coast Guard), inspections conducted within 12 months of the application.

(xi) Applicant must warrant vessel meets, or will meet, before the start of a TSP Operating Agreement, the requirements of a Quality Management System (QMS). If an applicant does not currently have the required systems in place it will provide a narrative describing how it will have these required systems in place.

(9) Provide an assessment of the utility of the product tank vessel(s) to DoD fuel transportation requirements including any specific national defense sealift features. Provide characteristics that indicate the utility of the product tank vessel(s) to DoD including items of specific value.

(i) Applicant must provide an assessment of the vessel's ability to install CONSOL and the proposed locations for installation. CONSOL details may be found on the Maritime Administration's Tanker Security Program website at: <https://www.maritime.dot.gov/national-security/tanker-security-program>.

(ii) Owner must confirm vessel's ability to sustain warranted speed of 14 knots, fully laden, in moderate weather (Force 4 on the Beaufort Scale).

(iii) Provide the number and location of available berths for additional personnel beyond the ship crew.

(10) Provide an assessment of the commercial viability of your proposed product tank vessel(s).

(11) Provide any charters or management agreements that would govern the operation of the vessel if selected (pro forma copies are acceptable), including but not limited to the following:

(i) Demise or bareboat charter;

(ii) Vessel management agreement; and

(iii) Crewing agreement.

(12) Special security agreements. If applicable, provide a copy of any special security agreement.

(13) Documentation Citizen. If applicable, the Documentation Citizen must submit a signed certification as the demise charterer of the proposed Fleet Vessel. The certification must provide a statement that there are no treaties, statutes, regulations, or other laws of the foreign country of the parent that would prohibit the proposed Agreement Holder from performing its obligations under a TSP Operating Agreement.

(14) if operating under a foreign parent, the ultimate foreign parent of the Documentation Citizen demise charterer must submit a signed certification. The certification must provide a statement that the foreign parent will not influence the operation of the Fleet Vessel in a manner that will adversely affect the interests of the United States.

(15) For a United States Citizen Trust agreement, if the Applicant intends to place the vessel in a United States Citizen Trust during its operation in the fleet, provide a copy of any such trust agreement (pro forma copies are acceptable).

(16) If applicable, provide a replacement product tank vessel plan if your product tank vessel is a fleet vessel over 10 years of age. The replacement product tank vessel plan must include:

(i) The vessel's characteristics as applicable in items (8-9) above;

(ii) A letter of intent or other document indicating agreement for purchase of product tank vessel; and

(iii) A forecast of operations for five years for the replacement product tank vessel.

(17) Special rule regarding age of participating fleet vessel. Age restrictions will not apply during the first 30-month period beginning on the date the vessel begins operating under the TSP Operating Agreement if the Secretary determines that the participant has entered an arrangement to obtain a replacement vessel that will be eligible to be included in a TSP Operating Agreement.

(18) Provide an anti-lobbying certificate as required by 49 CFR part 20 stating that no funds provided under the TSP have been used for lobbying to obtain a TSP Operating Agreement.

(b) *Procedures for applications.* (1) *Address.* Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the fleet. Applications may be submitted electronically to sealiftsupport@dot.gov or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

(2) *Time deadlines.* Within 90 days after the close of the application period, the Secretary will approve an application, in conjunction with the SecDef, or provide in writing the reason for denial of that application.

(3) *Existing maritime security fleet vessels.* The Secretary may approve a completed application from an Applicant that, on the date of its application, is operating a product tank vessel in the Maritime Security Fleet in accordance with 46 U.S.C. chapter 531 and 46 CFR part 296.

#### **§ 294.7 Procedural waivers.**

In consultation with DoD, MARAD may, at MARAD's own initiation or in response to a request by an interested party, after a finding of good cause to suspend, revoke, amend, or waive any requirement of the regulations in this part, subject to the provisions of the Administrative Procedure Act and any statutory limitations.

### **Subpart B—Establishment of a Tanker Security Fleet**

#### **§ 294.9 Product tanker vessel eligibility requirements.**

(a) *Eligibility.* To be eligible to be included in the fleet, the vessel must:

- (1) Meet the requirements of § 294.11;
- (2) Operate (or in the case of a vessel to be constructed, will be operated) in providing transportation in United States foreign commerce;
- (3) Be self-propelled;
- (4) Be not more than 10 years of age on the date the vessel is first included in the Fleet;



(5) Be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense;

(6) Be commercially viable, as determined by the Secretary of Transportation; and

(7) Be —

(i) A vessel of the United States; or

(ii) Not a vessel of the United States, but the owner of the vessel has demonstrated that--

(A) The vessel is eligible for a USCG certificate of inspection; and

(B) The vessel owner intends to have the vessel documented under 46 U.S.C. chapter 121 at the time the vessel is to be included in the fleet.

(b) *Telecommunications and other electronic equipment.* The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under a TSP Operating Agreement will satisfy all Federal Communications Commission equipment certification requirements if:

(1) The equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) The country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) The equipment, at the end of its useful life, will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

#### **§ 294.11 Owner, charterer, and operator citizenship eligibility requirements.**

*Eligibility determination.* For a vessel to be eligible to be included in the Fleet, vessel owners, charterers, and operators must evidence that, during the period of a TSP Operating Agreement, one of the following must be true:

(a) The vessel is owned and operated by one or more persons that are citizens of the United States in accordance with 46 U.S.C. 50501.

(b) The vessel is owned by a citizen of the United States in accordance with 46 U.S.C. 50501, or United States Citizen Trust, and the following conditions are met:

(1) The vessel is demise chartered to a person or entity that:

(i) Is eligible to document the vessel under 46 U.S.C. chapter 121;

(ii) Is organized such that the chairman of the board of directors, chief executive officer, and most of the members of the board of directors are citizens of the United States, and are appointed and subjected to removal only upon approval by the Secretary;

(iii) Certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the program participant for the vessel from performing its obligations under a TSP Operating Agreement; and

(iv) In the case of a vessel that is demise chartered to an entity that is owned or controlled by another person or entity that is not a citizen of the United States under 46 U.S.C. 50501, that other person or entity certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the person or entity from performing its obligations under a TSP Operating Agreement and enters into an agreement with the Secretary not to influence the vessel's operation in any way that would be detrimental to the United States.

(2) The Secretary and SecDef notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives that the Secretaries concur with the certifications by the documentation citizen required under § 294.5(a)(13), and any ultimate foreign parent corporation under § 294.5(a)(14), and after a review, agree that there are no legal, operational, or other impediments that would prohibit the owner or operator of the vessel from performing its obligations under a TSP Operating Agreement.

(c) The vessel is owned and operated by a defense contractor, including affiliated or related companies within the same corporate group, that meets the following requirements:

- (1) Eligible to document the vessel under 46 U.S.C. chapter 121;
  - (2) Operates or manages other United States-documented vessels for the SecDef, or charters other vessels to the SecDef;
  - (3) Enters into a special security agreement with the SecDef;
  - (4) Certifies to the Secretary, at the time of application and consistent with § 294.5(a)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Agreement Holder from performing its obligations under a TSP Operating Agreement; and
  - (5) Any foreign corporate parent company of the Defense Contractor proffers, at the time of application for a TSP Operating Agreement, an agreement consistent with § 294.5(a)(14), not to influence the vessel's operation in a way that is detrimental to the United States.
- (d) The vessel is owned by a Documentation Citizen in accordance with 46 U.S.C. Chapter 121 and demise chartered to a Citizen of the United States in accordance with 46 U.S.C. 50501.

**§ 294.13 Special rule for fleet vessel entry age.**

An Applicant may apply for a TSP Operating Agreement with a vessel that exceeds the maximum entry age requirement of § 294.9(a)(4), if it satisfies the following conditions:

- (a) The Applicant demonstrates their intent to replace the non-compliant vessel within 30 months after the commencement of operations under a TSP Operating Agreement;
- (b) Nominated vessels 15 years or older must be enrolled in a classification society's CAP and be rated equivalent to ABS CAP 2 or better; and
- (c) The Secretary determines that the Applicant has entered into an agreement to obtain and operate a replacement product tank vessel which, upon commencing operation under the same TSP Operating Agreement for the non-compliant vessel, will be eligible to be included in the fleet under § 294.9.

**Subpart C—Award of TSP Operating Agreements**

**§ 294.15 Initial award of TSP Operating Agreements.**

(a) *Number of agreements.* The Secretary, in concurrence with SecDef, may award up to ten TSP Operating Agreements for the operation of product tank vessels from among those applications submitted by qualified Applicants. If the Secretary and SecDef are unable to select ten vessels for inclusion in the Fleet from their initial review of applications, they may accept additional applications for review to ensure that the Secretary can award ten TSP Operating Agreements.

(b) *Vessel selection priority.* In consideration of the applications, the Secretary and SecDef will consider each Applicant's vessel(s)'s qualifications as they relate to subpart B and will give priority to applications based on the criteria in paragraphs (b)(1) through (3) of this section:

- (1) Vessel capabilities, as established by SecDef;
- (2) Applicant's record of vessel ownership and operation of tanker vessels; and
- (3) Applicant's citizenship, with preference for section 50501 citizens.

(c) *Consideration of applications requesting an age waiver.* If an Applicant applies for a TSP Operating Agreement under the provisions of § 294.15, the Secretary and SecDef will consider:

- (1) Whether the vessel is enrolled in its class society's CAP and has maintained a rating equivalent to ABS CAP 2 or better;
- (2) The vessel priority factors in § 294.15(b) for both the proposed non-compliant vessel and the vessel proposed to replace the non-compliant vessel within the initial 30 months of the TSP Operating Agreement; and
- (3) The feasibility of the Applicant's plan to obtain and operate the compliant replacement vessel within the initial 30 months of the TSP Operating Agreement.

(d) *Notification to Applicants.* After the Secretary, in concurrence with SecDef, has selected those vessels to be included in the Fleet, the Secretary will notify all Applicants as to whether their applications were successful or unsuccessful.

- (1) For each successful application, the Secretary will extend an offer to the Applicant to enter into one or more TSP Operating Agreements, based on the number of vessels selected from the

Applicant's application for inclusion into the Fleet. Successful Applicants will have up to 90 days in which to accept or decline the Secretary's offer.

(2) For each unsuccessful application, the Secretary will inform the Applicant of the reason(s) why the application was unsuccessful.

#### **§ 294.17 Subsequent award of TSP Operating Agreements.**

(a) *Availability.* When a TSP Operating Agreement becomes available through termination by the Secretary or early termination by an Agreement Holder, and no transfer under 46 U.S.C. 53405(e) is involved, MARAD will accept applications for a new TSP Operating Agreement pursuant to paragraphs (a)(1) through (3) of this section:

(1) The proposed vessel must meet the requirements of § 294.9;

(2) The Applicant must meet the requirements of § 294.11; and

(3) The Applicant must apply in accordance with the requirements of § 294.5.

(b) *Consideration of applications.* The Secretary and SecDef will consider all applications within the priority structure of § 294.15(b).

(c) *Notification and award of a new TSP Operating Agreement.* Upon selection of the best-qualified vessel(s) from among the applications received, MARAD will enter into a new TSP Operating Agreement with the successful Applicant as soon as is practicable. Successful Applicants must notify the Secretary of their acceptance of an offer to enter into a TSP Operating Agreement within 90 days.

#### **§ 294.19 Nature of award procedure.**

TSP furthers a public purpose and MARAD does not acquire goods or services through TSP.

Therefore, the selection process for awarding TSP Operating Agreements does not constitute an acquisition subject to procurement law or the Federal Acquisition Regulation.

#### **Subpart D—TSP Operating Agreements**

#### **§ 294.21 General conditions.**

(a) *Number of agreements.* The Secretary may enter into up to ten TSP Operating Agreements for vessels that were either selected in accordance with § 294.15 or which, on the effective date of a TSP Operating Agreement, were operating under an MSP Operating Agreement in accordance with 46 U.S.C. chapter 531 and 46 CFR part 296, for fiscal year 2022 and any prior fiscal year.

(b) *Term of agreements.* All TSP Operating Agreements will be effective for one fiscal year and subject to the availability of appropriations, may be renewed for each subsequent fiscal year through the end of fiscal year 2035.

(c) *Replacement vessels.* An Agreement Holder may replace a vessel under a TSP Operating Agreement with another vessel that is eligible to be included in the fleet under § 294.9, if the Secretary, in conjunction with SecDef, approves the replacement vessel.

(d) *Termination by the Secretary.* If an Agreement Holder fails to comply with the terms of a TSP Operating Agreement:

(1) The Secretary will notify the Agreement Holder and provide a reasonable opportunity for the Agreement Holder to comply with the terms and conditions of the TSP Operating Agreement; and

(2) The Secretary will terminate the TSP Operating Agreement if the Agreement Holder fails to achieve such compliance.

(e) *Termination by the Secretary for long-term charter.* If an Agreement Holder time charters a vessel enrolled in the TSP to the United States Government for a period that together with options, occurs for more than 180 continuous days, then the Secretary will terminate the TSP Operating Agreement.

(f) *Early termination by an Agreement Holder.* The Agreement Holder must notify the Secretary no later than 60 days before the proposed effective termination date that the Agreement Holder intends to terminate the TSP Operating Agreement. Even after early termination of the Operating Agreement, the Agreement Holder will remain bound by the provisions related to

vessel documentation and national security requirements, including any commitments under an Emergency Preparedness Agreement, for the full term of the TSP Operating Agreement.

(g) *Nonrenewal for lack of funds.* If only partial funding is appropriated by the 60<sup>th</sup> day of the fiscal year, then the Secretary, in consultation with SecDef, will select the vessels to retain under TSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. If no funds are appropriated by the 60<sup>th</sup> day of such fiscal year, and notwithstanding any other provision, then all TSP Operating Agreements will be terminated, and each Agreement Holder will be released from its obligations under the TSP Operating Agreement. Final payments under the terminated TSP Operating Agreements will be made in accordance with § 294.31. To the extent that funds are appropriated in a subsequent fiscal year, former TSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Agreement Holder, provided the TSP vessel remains eligible.

(h) *Release of vessels from obligations.* For Agreement Holders who have been released from their obligations under a TSP Operating Agreement due to lack of funds in any fiscal year by the 60<sup>th</sup> day of that fiscal year,

(1) The Agreement Holder may transfer and register each vessel covered by a terminated TSP Operating Agreement to a foreign registry that is acceptable to the Secretary and SecDef, notwithstanding 46 U.S.C. chapter 561 and 46 CFR part 221;

(2) If 46 U.S.C. chapter 563 is applicable to a vessel that has been transferred to foreign registry due to the termination of a TSP Operating Agreement, then that vessel remains available to be requisitioned by the Secretary pursuant to 46 U.S.C. chapter 563; and

(3) The provisions of this section do not apply to vessels under TSP Operating Agreements that have been terminated for any other reason.

(i) *Transfers of TSP Operating Agreements.* An Agreement Holder may transfer a TSP Operating Agreement, including all rights and obligations under the TSP Operating Agreement, to any person that is eligible under § 294.11 to enter into a TSP Operating Agreement, if the

Secretary and SecDef jointly determine that the transfer is in the best interests of the United States. A transaction is not considered a transfer of a TSP Operating Agreement if the same legal entity with the same vessels remains the Agreement Holder under the TSP Operating Agreement.

**§ 294.23 Special terms.**

(a) *TSP Operating Agreement.* Each TSP Operating Agreement will require that, during the period a fleet vessel is operating under that TSP Operating Agreement, the fleet vessel must:

- (1) Be documented as a vessel of the United States under 46 U.S.C. chapter 121;
- (2) Operate exclusively in:
  - (i) Foreign commerce;
  - (ii) Mixed foreign commerce and domestic trade permitted under a registry endorsement issued under 46 U.S.C. 12111, and to those points identified in 46 U.S.C. 55101(b);
  - (iii) Foreign-to-foreign commerce; or
  - (iv) Under charter to the United States, except as provided in 46 U.S.C. 53404(b); and
- (3) Not otherwise operate in the coastwise trade of the United States;
- (4) Not receive payments during a period in which the Agreement Holder owns, operates, or charters a vessel engaged in noncontiguous domestic trade, unless the Agreement Holder is a section 50501 citizen, applying the 75 percent ownership requirements of 46 U.S.C. 50501; and
- (5) Enroll, for vessels 15 years or older, in their classification society's CAP and maintain a CAP rating of 2 or better.

(b) *Operating agreement as an obligation of the United States government.* The amounts payable to an Agreement Holder under a TSP Operating Agreement constitute a contractual obligation of the United States Government to the extent of actual appropriations.

(c) *Operating under a Continuing Resolution.* In the event funds are available under a Continuing Resolution (CR), the terms and conditions of the TSP Operating Agreements will be in force provided sufficient funds are available to fully meet obligations under TSP Operating



Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated under a CR at sufficient levels for any portion of a fiscal year, the Secretary will select the vessels to retain within the funding level of the previous fiscal year, in consultation with the SecDef, based on the Secretaries' determination of the most militarily useful and commercially viable vessels. For any Agreement Holder with a TSP Operating Agreement that does not receive funds, the terms and conditions of any applicable TSP Operating Agreement may be voided, and the Agreement Holder may request termination of the TSP Operating Agreement.

(d) *National security.* Each TSP Operating Agreement will require the Agreement Holder to enter into a Voluntary Tanker Agreement (VTA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

(e) *United States Merchant Marine Academy cadet training.* The Agreement Holder must agree:

(1) To carry on the fleet vessel two United States Merchant Marine Academy cadets, if available, on each voyage; and

(2) To implement prior to accepting an Operating Agreement appropriate policies, programs, and criteria necessary to comply with all MARAD cadet safety guidelines that address sexual harassment, sexual assault, and other inappropriate conduct.

(3) Upon a finding of non-compliance, the Administrator may require the Agreement Holder to take corrective actions or find such failure to constitute a violation of the TSP Operating Agreement.

#### **§ 294.25 National security modifications.**

A participant agrees to the installation onboard its Fleet Vessel of militarily useful features for national defense purposes as approved by U.S. Coast Guard and the vessel's classification society.

#### **§ 294.27 Financial reporting.**

The Agreement Holder must submit the following reports to MARAD, including management footnotes where necessary to make a fair financial presentation:

(a) *Vessel operating cost information.* Not later than 120 days after the close of the Agreement Holder's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6; and

(b) *Financial statement.* Not later than 120 days after the close of the Agreement Holder's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its Emergency Preparedness Agreement, or if not current year data, a Schedule 310 of the MA-172.

### **Subpart E—Billing and Payment**

#### **§ 294.29 Billing procedures.**

All Agreement Holders must submit a voucher to the Maritime Administration for payment. For Agreement Holders operating under more than one TSP Operating Agreement, the Agreement Holder may submit a single monthly voucher applicable to all its TSP Operating Agreements. Each voucher submission must include a certification that the vessel(s) for which payment is requested were operated in accordance with § 294.23(a) and applicable TSP Operating Agreements. All submissions must be forwarded to the Tanker Security Program, Maritime Administration, via email to [sealiftsupport@dot.gov](mailto:sealiftsupport@dot.gov). Payments will be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901, et seq.

#### **§ 294.31 Payments.**

(a) *Amount payable.* A TSP Operating Agreement will provide for each Fleet Vessel, an annual payment, subject to the availability of appropriations, equal to \$6,000,000 for each of fiscal years 2022 to 2035. This amount will be paid in equal monthly installments at the end of each month. The annual amount payable will not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable.* The annual amount otherwise payable under a TSP Operating Agreement will be reduced on a pro rata basis for each day less than 320 days in a fiscal year that a Fleet Vessel is not operated in accordance with § 294.23(a)(1) through (3).

(c) *No payment.* (1) Regardless of whether the Agreement Holder has or will operate the Fleet vessel for 320 days a year, the Agreement Holder will not be paid:

(i) For any day in which the TSP Vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to 46 U.S.C. sections 55302(a), 55305, or 55314 (using the United States standard of short tons, which is equivalent to 6,803.85 metric tons or 6,696.75 long tons);

(ii) During a period in which the Agreement Holder participates in noncontiguous domestic trade, unless that Agreement Holder is a Section 50501 Citizen, applying the 75 percent ownership requirement of that Section;

(iii) For any days in which the Agreement Holder operates a TSP Vessel that is 15 years or older which is not enrolled in their classification society's CAP or is not maintaining a CAP rating of 2 or better;

(iv) For any day in which the Agreement Holder operates a TSP Vessel that is in excess of 20 years of age;

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey, inspection, or repair, unless, prior to the expiration of the vessel's 30-day drydock and repair period, the Agreement Holder obtains approval from MARAD for an extension beyond 30 days;

(vi) For any day in which the Agreement Holder does not, at the request of the Administrator, carry up to two United States Merchant Marine Academy cadets onboard; and

(vii) If the Agreement Holder does not operate or maintain the Fleet Vessel in accordance with the terms of the TSP Operating Agreement.

(2) To the extent that non-payment days under paragraph (c) of this section are known, Agreement Holder payments will be reduced at the time of the current billing. The daily reduction amounts will be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 294.23(a) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period must be electronically transferred using MARAD's prescribed format, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

## **Subpart F—Appeals Procedures**

### **§ 294.33       Administrative determinations.**

(a) *Policy.* An Agreement Holder who disagrees with the findings, interpretations, or decisions of MARAD with respect to the administration of this part or any other dispute or complaint concerning the Agreement Holder's TSP Operating Agreement(s) may submit an appeal to the Administrator. The appeals must be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of MARAD. Such an appeal should be addressed to the Maritime Administrator, Attn.: TSP Operating Agreement Appeals, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590 or via email to [sealiftsupport@dot.gov](mailto:sealiftsupport@dot.gov). An appeal is a prerequisite to exhausting administrative remedies.

(b) *DoD determinations.* 46 U.S.C. chapter 534 assigns joint and separate roles and responsibilities to the Secretary and the SecDef. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement 46 U.S.C. chapter 534. An Agreement Holder who disagrees with the initial findings, interpretations, or decisions regarding the implementation of 46 U.S.C. chapter 534—whether joint or separate in nature—must communicate such disagreement to MARAD. Any

disagreement or dispute of an Agreement Holder may, where determined appropriate by MARAD, be transferred to the Director of Policy and Plans, USTRANSCOM for resolution. An Agreement Holder who disagrees with the findings, interpretations, or decisions of the Director of Policy and Plans, USTRANSCOM, with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal must be made in writing to the Commander within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of the Director of Policy and Plans. Such an appeal should be addressed to the Commander, United States Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225-5357. or via email to [transcom.scott.tccc.mbx.commander@mail.mil](mailto:transcom.scott.tccc.mbx.commander@mail.mil).

(c) *Process.* The Administrator, or the Commander in the case of a DoD determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Administrator, or the Commander in the case of a DoD determination, will be administratively final.

(Authority: 46 U.S.C. chapter 534, 49 CFR 1.93)

By order of the Maritime Administrator.

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**T. Mitchell Hudson, Jr.**  
*Secretary, Maritime Administration.*